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Cut Off with a Shilling

J. P. McNamara

CURIOSITIES OF THE LAW

CUT OFF WITH A SHILLING

When one considers the persistance with which laymen belabor the legal profession for its alleged love of technicalities, it seems rather a strange thing that one of the most cruel technicalities (and incidentally a grave misconception of the law) is kept alive, natured and almost insisted upon by lay persons. This in spite of the fact that the following of the the rule has been repudiated by courts of highest resort.

It might be well be note then, at the outset of this discussion, that the idea an heir to be effectually cut off in a will must be given a shilling (or a dollar) is not generally the law in the absence of statute. (*In re Emernecker's Estate,* 218 Pa. 369, 67 Atl. 701). In other words the bit of "law" that you have heard on the lips of your neighbors so many times, and an impression that seems well rooted in the average mind, is a misconception. Nothing more. An heir may be quite efficiently barred without recourse to this strategem. Of course, if the idea is carried out the heir is also barred from recovery.

The bogie, (if we may call it that) is not young. It is mentioned by Blackstone (2 Comm. 503) when he says: "Hence probably, has arisen that groundless vulgar error of the necessity of leaving their heir a shilling in order to disinherit him effectually." So even in his time the idea had gained some prominence.

Such a rule appears to have applied in the ancient Roman law and we find that there if a child was passed over without mention, it was presumed that he had been ommited by accident, but if he had any legacy no matter how small, it was obvious that the omission was intentional. In the latter case no *querela inofficiosi testamenti* was permitted.

This Roman principle was the one borrowed to fit the case of a child born to the testator by marriage subsequent to the making of the will, and it is most probable that it was in this manner that the idea of "cutting the heir off with a shilling" originally got into

the minds of men. Many states have statutes providing for the application of the rule in such cases.

The pathetic side of the misconception is brought out in *Re Emernecker's Estate* (Supra). In the case the decedant was an old German lady who executed a valid will giving all of her estate to a granddaughter who had supported the decedant for many years (from the time said granddaughter was thirteen years of age) to the exclusion of others who might hope to receive some of the decedant's property. After executing the will, friends and neighbors of the decedant told her that such a will was not valid unless "at least a dollar was given to all other heirs". Relaying on this information the decedant destroyed the will announcing that she would make another "the first fine day" and expressing a desire to have the will so framed in order to preclude all question of her granddaughter receiving all of her property. There was no mistaking the intent of the decedant. But she died within a few days, and before she had had time to prepare another will.

The court held that she had effectively revoked the will and that therefore she had died intestate. Further that her reasons were not a matter for the inquiry of the court and, though the holding here certainally resulted in the exact thing that she wished to avoid, nevertheless it was the only rule open to the court to follow.

The court there said: "If this case affords an illustration that may almost be called pathetic of the persistency of popular error. The notion that to disinherit the heir he must 'be cut off with a shilling' started more than three hundred years ago, never was the law either in England or Pennsylvania, and yet survives with such potency as to lead to results apparently as unjust as they were unintended."

If one desires a full discussion of the historical side of the question it will be found in the case of *In re Newlins Estate,* (209 Pa. 456, 58 Atl. 846, 68 L. R. A. 464). It is also to be noted that some states provide for this matter in their statutes, notice of which has not been taken here.

J. P. McNamara